

EDWARD H. KUBO, JR. (2499)
United States Attorney
District of Hawaii
LAWRENCE L. TONG (3040)
DERRICK K. WATSON (Cal. Bar No. 154427)
Assistant United States Attorneys
District of Hawaii
RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
ANDREW A. SMITH (NM Bar #8341)
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
c/o U.S. Attorneys Office
P.O. Box 607
Albuquerque, New Mexico 87103
Telephone: (505) 224-1468
Facsimile: (505) 346-7205
E-mail: andrew.smith@usdoj.gov

Attorneys for Defendants U.S. DEPARTMENT OF ENERGY
and NATIONAL SCIENCE FOUNDATION

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

LUIS SANCHO, WALTER L. WAGNER,) Civil No. 08-00136-HG-KSC
)
Plaintiffs,) **FEDERAL DEFENDANTS'**
)
) **DECLARATION OF**
v.) **BRIAN C. TOTH**
)
)
UNITED STATES DEPARTMENT OF)
ENERGY, *et al.*,)
)
Defendants.)
)

I, Brian C. Toth, hereby declare as follows:

1. I am currently employed as an attorney with the United States Department of Justice, Environment and Natural Resources Division (“Division”), Appellate Section, and I have personal knowledge of the facts in this declaration.

2. I have been employed by the Division since September 2002. Until June 2008, I was employed as a trial attorney by the Division’s Natural Resources Section (“NRS”). While at NRS, I was assigned as lead counsel for the federal defendants in the above-captioned matter. Although I transferred to the Appellate Section in early June 2008, I retained responsibility and continued to work on several NRS cases, including this case, in which I completed and filed the federal defendants’ combined motion to dismiss and motion for summary judgment.

3. On June 24, 2008, I electronically filed federal defendants’ combined motion to dismiss and motion for summary judgment (Doc. No. 14) through the Court’s case management/electronic case filing (“CM/ECF”) system. I obtained from the CM/ECF system the addresses of record for the plaintiffs, Mr. Sancho and Mr. Walter Wagner, and provided those addresses to my legal assistant with instructions to serve the electronically-filed papers on plaintiffs at the indicated addresses by first class United States mail. Later that day, my assistant confirmed for me that he had completed that task.

4. One of the documents that I electronically filed on June 24, 2008, in this case was federal defendants' concise statement of material fact, which is identified as document number 16 on the court's public docket. In addition to directing my legal assistant to serve this document by U.S. mail as described in paragraph 3, I also sent federal defendants' concise statement of fact to the plaintiffs by electronic mail ("e-mail") as a courtesy that same day. Attached as Exhibit A to this declaration is one of several e-mail messages that I sent to the plaintiffs on June 24, 2008. The exhibit indicates that the file, "Concise Statement of Fact.pdf," is attached to the e-mail message, along with several other documents. Exhibit B is an image of my computer screen showing the e-mail address that I used for Mr. Wagner. The e-mail address that I used for Mr. Sancho is also visible.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of August, 2008.



BRIAN C. TOTH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 29, 2008, true and correct copies of the foregoing were served on the following individuals by United States mail, firstclass postage prepaid:

LUIS SANCHO
P.O. Box 411
Honomu, Hawaii 96728

WALTER L. WAGNER
P.O. Box 881
Pepeekeo, Hawaii 96783

MARTIN S. KAUFMAN
Atlantic Legal Foundation
2039 Palmer Avenue
Larchmont, New York 10538

and by the Court's ECF System on:

ROBERT M. KOHN
Price Okamoto Himeno & Lum
rkohn@pohlhawaii.com

and by email on:

WALTER L. WAGNER
lhcdefense@hotmail.com
mbbg2005@hotmail.com

LUIS SANCHO
luisancho@hotmail.com

/s/ Derrick K. Watson

DERRICK K. WATSON
Assistant U.S. Attorney